

House Bill 2916

Sponsored by Representative WHISNANT; Representative SCHAUFLER (at the request of Plastic Shipping Container Institute)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies definition of "rigid plastic container." Allows sale or offer for sale, or use in association with sale or offer for sale of products in Oregon, of rigid plastic container if package may be used by consumer for period of two years or more. Allows alternative plastic resins to be used to reduce packages.

A BILL FOR AN ACT

1
2 Relating to plastic containers; amending ORS 459A.650, 459A.655 and 459A.660.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 459A.650 is amended to read:

5 459A.650. As used in ORS 459A.650 to 459A.665:

6 (1) "Package" means any container used to protect, store, contain, transport, display or sell
7 products.

8 (2) "Package manufacturer" means the producer or generator of a rigid plastic container for a
9 packaged product that is sold or offered for sale in Oregon.

10 (3) "Product-associated package" means a brand-specific rigid plastic container line, which may
11 have one or more sizes, shapes or designs and which is used in conjunction with a particular, ge-
12 neric product line.

13 (4) "Product manufacturer" means the producer or generator of a packaged product that is sold
14 or offered for sale in Oregon in a rigid plastic container.

15 (5) "Recycled content" means the portion of a package's weight that is composed of recycled
16 material, as determined by a material balance approach that calculates total recycled material input
17 as a percentage of total material input in the manufacture of the package.

18 (6) "Recycled material" means a material that would otherwise be destined for solid waste dis-
19 posal, having completed its intended end use or product life cycle. Recycled material does not in-
20 clude materials and by-products generated from, and commonly reused within, an original
21 manufacturing and fabrication process.

22 (7) "Rigid plastic container" means any package composed [*predominantly*] **only** of plastic resin
23 which has a relatively inflexible finite shape or form with a minimum capacity of eight ounces and
24 a maximum capacity of five gallons, and that is capable of maintaining its shape while holding other
25 products.

26 **SECTION 2.** ORS 459A.655 is amended to read:

27 459A.655. (1) Except as provided in ORS 459A.660 (5), any rigid plastic container sold, offered
28 for sale or used in association with the sale or offer for sale of products in Oregon shall:

29 (a) Contain 25 percent recycled content by January 1, 1995;

30 (b) Be made of plastic that is being recycled in Oregon at a rate of 25 percent by January 1,

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 1995; [or]

2 (c) Be a package that is used five or more times for the same or substantially similar use[.]; or

3 **(d) Be a package that may be used by a consumer for a period of two years or more.**

4 (2) A rigid plastic container shall meet the requirements in subsection (1)(b) of this section if
5 the container meets one of the following criteria:

6 (a) It is a rigid plastic container and rigid plastic containers, in the aggregate, are being recy-
7 cled in the state at a rate of 25 percent by January 1, 1995;

8 (b) It is a specified type of rigid plastic container and that type of rigid plastic container, in the
9 aggregate, is being recycled in the state at a rate of 25 percent by January 1, 1995; or

10 (c) It is a particular product-associated package and that type of package, in the aggregate, is
11 being recycled in the state at a rate of 25 percent by January 1, 1995.

12 **SECTION 3.** ORS 459A.660 is amended to read:

13 459A.660. (1) Each product manufacturer and package manufacturer shall maintain the records
14 specified in this section that demonstrate for all rigid plastic containers of the manufacturer, how
15 the manufacturer has complied with one or more of the requirements of ORS 459A.655, or for what
16 reason, if any, the containers are exempt under subsection (5) of this section for the applicable pe-
17 riod of time. Proprietary information included in the records, if submitted to the Department of
18 Environmental Quality under this section shall not be made available to the general public. The
19 records documenting the compliance shall be submitted to the department upon its request. Each
20 manufacturer required to keep records under this section may be audited by the department. The
21 department shall not take enforcement action, audit or request copies of the records kept by a
22 manufacturer under this section before January 1, 1996, and until the department calculates the
23 recycling rates in ORS 459A.655 (2) for the calendar year 1995.

24 (2) To the extent a rigid plastic container complies with ORS 459A.655 (1)(c) or (2)(c) because
25 the product manufacturer's particular product-associated package or all of the product manufactur-
26 er's rigid plastic containers are being reused under ORS 459A.655 (1)(c) or recycled in the state at
27 the rate specified in ORS 459A.655 (2)(c), the product manufacturer shall keep records that include
28 the information the department may require to determine the product manufacturer's compliance.

29 (3) To the extent a rigid plastic container complies with ORS 459A.655 (1)(a) or (b) or (2)(a) or
30 (b), the package manufacturer shall keep records that include the information the department may
31 require to determine the package manufacturer's compliance.

32 (4) If subsection (3) of this section applies, the product manufacturer also shall maintain a re-
33 cord of the written certification by the package manufacturer that the rigid plastic containers
34 comply with ORS 459A.655 (1)(a) or (b) or (2)(a) or (b). The certification also shall state that the
35 package manufacturer will maintain the records required in subsection (3) of this section, and upon
36 request of the department, submit to the department records that include the information the de-
37 partment may require to determine compliance. The product manufacturer may rely on the certif-
38 ication as a defense in any action or proceeding for violation of or to enforce ORS 459A.650 to
39 459A.665, whether such action or proceeding is brought under ORS 459.992, 459.995 or under any
40 other law.

41 (5) Rigid plastic containers are exempt from the requirements of ORS 459A.655 if the containers
42 are not subject to the requirements of ORS 459A.700 to 459A.740 and if:

43 (a) The containers contain drugs, medical devices, medical food or infant formula as defined by
44 the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 301 et seq.

45 (b) The packages are associated with products produced in or brought into the state that are

1 destined for shipment to other destinations outside the state and that remain with such products
 2 upon such shipment.

3 (c) The packaging is necessary to provide tamper-resistant seals for public health purposes.

4 (d) The packages are reduced packages. A package shall qualify as reduced when the ratio of
 5 package weight per unit of product has been reduced by at least 10 percent when compared with
 6 the packaging used for the same product by the same packager five years earlier. In no case may
 7 packaging reduction be achieved, for purposes of this paragraph, by substituting a different material
 8 category for a material that constituted a substantial part of the packaging in question, or by
 9 packaging changes that adversely impact either the potential for the package to be recycled or
 10 contain recycled material. Exemptions under this paragraph shall be limited to five years, shall not
 11 be renewable and shall not be applicable to packages for which the ratio of package weight per unit
 12 of product increased after January 1, 1990. **Alternative plastic resins may be used to reduce**
 13 **packages.**

14 (e) There has been substantial investment in achieving the recycling goal, viable markets for the
 15 material, if collected, can be demonstrated, the material is within five percent of the goal, there is
 16 substantial evidence of accelerating recycling rates and reasonable projections show that the mate-
 17 rial will meet the goal within two years.

18 (f) The containers contain food. A container shall be considered to contain food if it contains
 19 an article used, or intended to be used, for food, ice, confection or condiment, whether simple or
 20 compound, or any part or ingredient thereof or in the preparation thereof, and for human consump-
 21 tion, but a container shall not be considered to contain food if it contains a drinkable liquid and is
 22 a rigid plastic bottle. As used in this paragraph, "rigid plastic bottle" means a container that has
 23 a mouth narrower than its base.

24 (6) For any rigid plastic container not described in subsection (3) of this section, each product
 25 manufacturer shall keep records that include the information the department may require as evi-
 26 dence that the container is exempt from the requirements of ORS 459A.655.

27 (7) The department shall not enforce the provisions of ORS 459A.650 to 459A.660 during the first
 28 full calendar year after the department determines for the first time that the rate for compliance for
 29 rigid plastic containers in the aggregate is less than 25 percent. For any period for which the de-
 30 partment determines that the rate for compliance for rigid plastic containers in the aggregate equals
 31 or exceeds 25 percent, product manufacturers and package manufacturers are not required to keep
 32 records under this section and are not required to comply with the requirements of ORS 459A.655
 33 (1)(a) and (c) and (2)(b) and (c).

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